

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: HEALTH CARE FINANCING ADMINISTRATION**

1. TRANSMITTAL NUMBER:

0 1 - 0 0 2

2. STATE:

CA

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

April 1, 2001

5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN

AMENDMENT TO BE CONSIDERED AS NEW PLAN

AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 433.36(c) 1901(a)(18) and 1917(a) and
(b) of the Act

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.17-A, pages 2, ~~2a, 2a1, 2b~~
~~and 2c~~ 3, 4, 5.

Page 53 PJD

7. FEDERAL BUDGET IMPACT:

a. FFY 2000-01 \$ 0
b. FFY 2001-02 \$ 0

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):

Attachment 4.17-A, pages 2, 2a, 2b and
2c

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10. SUBJECT OF AMENDMENT:

Post death liens and waiver of proportionate share of claims for person(s) granted hardship

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT

COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED: The Governor's Office does not wish to review State Plan Amendments

2. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Gail L. Margolis

4. TITLE:

Deputy Director, Medical Care Services

5. DATE SUBMITTED:

April 19, 2001

16. RETURN TO:

Department of Health Services
Attn: State Plan Coordinator
714 P Street, Room 1640
Sacramento, CA 95814

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

April 23, 2001

18. DATE APPROVED:

7/11/01

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

April 1, 2001

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

for Linda Minamoto

22. TITLE:

Associate Regional Administrator
Division of Medicaid

23. REMARKS:

Blocks 8 and 9 - Page numbers changed to reflect material submitted by the State.

Revision: HCFA-PM-95-3 (MB)
May 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: California

4.17 Liens and Adjustments or Recoveries

Citation

42 CFR 433.36 (c)
1902 (a) (18) and
1917 (a) and (b) of the Act

(a) Liens

_____ The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

_____ The State complies with the requirements of section 1917 (a) of the act and regulations at 42 CFR 433.36 (c) - (g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

X The State imposes liens on real property on account of benefits incorrectly paid.

State imposes TEFRA liens 1917 (a) (i) (B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

X The State imposes liens on both real and personal property of an individual after the individual's death.

TN No. 01-002
Supersedes
TN No. 94-031

Approval Date JUL 11 2001 Effective Date APR - 1 2001

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: CALIFORNIA

4. The State defines undue hardship as follows: A. An applicant can demonstrate through submission of a written application or, if applicable, at an estate hearing, that enforcement of the Department's claim would result in an undue hardship to the applicant based on factors listed in 5 below. B. An undue hardship does not exist when the decedent or applicant created the hardship by using estate planning methods to divert or shelter assets in order to avoid estate recovery. C. To the extent that there currently is, or later becomes any conflict between the following criteria and the standards that may be specified by the Secretary of the Department of Health and Human Services, the federal standards shall prevail.
5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

In determining the existence of an undue hardship the Department shall consider factors including, but not limited to the following:

- A. When, without receipt of proceeds of the estate, the applicant would become eligible for public assistance payments and /or medical assistance programs; or
- B. When allowing the applicant to receive the inheritance from the estate would enable the applicant to discontinue eligibility for public assistance payments and/or medical assistance programs; or
- C. When the estate property is part of a business, including a working farm or ranch, and recovery of medical assistance expenditures would result in the applicants losing their sole means of livelihood; or
- D. When any aged, blind, or disabled individuals (excepting those with statutory exemptions) who have been continuously living in the decedent's home for one year or more, and continue to reside there, would have difficulty obtaining financing (such as a home equity loan) to repay the State; or
- E. When the applicant transferred the property to the decedent for no consideration; or
- F. When equity in the real property is needed by the applicant to make the property habitable, or to acquire the necessities of life, such as food, clothing, shelter, or medical care.

If it is determined that enforcement of the State's claim would result in a undue hardship to one or more of the dependents, heirs, or survivors of the individual against whose estate the claim exists, the claim amount shall be waived, in whole or in part, for the proportionate share of the claim. If the asset is an income producing business, the State will not recover from any heir if collection from one heir would cause an undue hardship to another heir.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

Because of the volumes of cases and available resources, the Department has determined that it is not cost-effective to file claims/liens if the potential net collection amount is under \$500. However, when the administrative costs to process a case and effect collections is very low, usually with cases handled by public administrators/guardians and with some attorneys' formal probates (where there may be unreported assets), the Department may file for any amount. Additionally, in certain circumstances when the debtor has excessive allowable expenses or obligations, when the heir(s) live out of state and is not responsive to collection efforts, etc., we may determine that it is not cost-effective to litigate or otherwise pursue recoveries, even though the net assets are over the normal \$500 threshold.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

A. Advance Notice Procedure

Beneficiaries are notified of the Medi-Cal Estate Recovery program, during their initial application process and during annual redetermination, via the Rights and Responsibilities form (MC219) and Statement of Facts (MC210), which they read and sign. Our program also sends beneficiaries notices twice a year, informing them of any updates or changes in laws/procedures affecting estate recoveries. In addition, the Department publishes a

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Medi-Cal Pamphlet and places them in all of California's county welfare offices, which explains what property/assets are allowable for eligibles and indicates under what circumstances Medi-Cal may bill the estate of a deceased beneficiary. Heirs, or their representatives, are notified any time the Department intends to claim against a deceased beneficiary's estate or place a lien against an institutionalized beneficiary's real property (if beneficiary, or personal representative, has indicated no intent to return home), are informed of our legal authority to do so, and are given the opportunity to apply for a hardship waiver or otherwise appeal our decision.

B. Collection Procedures – Claims Filed Against the Estate of Deceased Medi-Cal Beneficiaries

The Department may be notified of Medi-Cal beneficiary's death in several different ways. The majority of our cases are set up as a result of a monthly data search of the Medi-Cal Eligibility Data System to check the eligibility status codes on each Medi-Cal beneficiary's file. If the eligibility status shows that the beneficiary was terminated by reason of death, a system-generated questionnaire is sent to the estate, at the last known address. In addition, Probate Code Sections 215 and 9202 require the estate attorney or personal representative of a deceased Medi-Cal beneficiary to notify the Department within 90 days of the date of death. The Department also receives referrals of the death of a person who may have been receiving Medi-Cal benefits from various other private and public sources.

When notice of a Medi-Cal client's death is received by the Department, research is necessary to verify the Medi-Cal eligibility periods, the beneficiary's assets at the time of death, and that the case meets the criteria of law to pursue recovery. Cases which pass this screening are established on the program's Automated Collection Management System (ACMS), claim details are requested and an itemized list of payment to providers, health plans, etc., is prepared. This itemization is used to file a claim in formal probate with the county recorder and/or with the heirs of the decedent's property.

Once a case is established, and accounts receivable (AR) entered into the ACMS, cases are monitored quarterly. Status request may be sent to the responsible party(ies) and case notes track the progress of the claim. Payments received are deposited daily and the ACMS AR adjusted (making sure that the correct amount was paid). Failure of payments to be made, claims honored, attorneys (or other responsible party) cooperating in closing probate, etc., may result in collection action against the heir(s), attorney, or other responsible persons, by litigating in small claims court, or referring to the Attorney General's Office for filing a complaint with the courts.

C. Collection Procedures – Voluntary Post Death Liens

Post-death liens may be utilized to satisfy a claim when one or more of the dependents, heirs, or survivors (distributee(s) of the deceased individual) are unable to pay the State's claim in full and can demonstrate they are unable to obtain financing to pay off the claim. A post-death lien is only utilized as a means to secure the Department's claim and is always voluntary in nature.

Once it has been determined that the distributee(s) are unable to pay the State's claim in full, the Department may offer to accept a post-death lien in an effort to collect. This is generally the case when distributee(s) receiving estate property are unable to obtain financing to pay the claim in full or because one or more of the heirs are living in the property and are not willing to sell the estate property. The Department may request monthly payments, based on the distributee's financial ability to pay, in addition to the placement of a lien on the estate property. These payments would continue until the lien is paid in full. The lien will accrue simple interest and becomes due and payable, including all interest accrued, upon: 1) the death of the distributee(s); 2) the sale, refinance, transfer, or change in title to the real property; 3) escrow funding; and/or 4) default in payments. When distributee(s) agree to a voluntary lien, the Department will prepare the lien documents and send to distributee(s) for notarized signature(s). Once the lien documents are returned to the Department, the Department forwards them on to the Recorder's Office for recording of the lien.

If a hardship waiver has been requested, a decision will be issued on the waiver request prior to the Department introducing a voluntary post-death lien.

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D. Collection Procedures – Imposing Liens Against the Real Property of Institutionalized Beneficiaries

At the time of their initial application for Medi-Cal benefits and during their annual redetermination process, institutionalized beneficiaries who own real property are asked if they intend to return home to live in that real property at any time in the future. If the beneficiary or personal representative indicates no intent to return home (and if there is no spouse or dependent relative residing in the home), the County Department of Social Services may send a Notice of Action (NOA) to the institutionalized beneficiary. The NOA informs beneficiaries that if the property is listed for sale (and Medi-Cal eligibility is established or continues), a lien will be recorded against the property to cover the cost of medical care received under the Medi-Cal program. The notice also advises the clients of their right to request further county review and/or a state hearing, within 30 days of the date of the notice, in order to present additional information/evidence for consideration. No action is taken during this 30-day period or pending further review and/or a hearing.

If, after the 30 days has elapsed, the Department will research the referral from the county to determine if the case meets the criteria of law to impose a lien against the property. That is, there is no surviving spouse, child under age 21, disabled child, or a sibling with an interest in the home, living in the home. Cases which pass this screening are established on the program's ACMS, claims details are requested and an itemized list of payments made thus far to providers, health plans, etc., is prepared to determine the preliminary amount of the lien. The Department then sends a lien to the appropriate county recorder's office and a copy to the beneficiary. The transmittal letter, which accompanies the beneficiary's copy of the lien, gives the preliminary amount of the lien, informs that the lien amount may increase monthly (as services are paid), and provides the name of the person to contact if an escrow is ready to close or a sale is finalized for the final balance due.

Once a case is established and an accounts receivable is entered onto ACMS, cases are monitored quarterly. Status requests may be sent to the beneficiary and case notes track the progress of the pending sale/lien. If at any time prior to the sale of the property, the Medi-Cal beneficiary is discharged from the medical institution and resumes use of the property as principal residence, the lien is removed. If and when the property is sold, the amount of the lien will be recovered from the proceeds of the sale.

E. Procedures for a Waiver of a Claim Based Upon Undue Hardship

California law and regulations require the Department to waive its claim against the estate of a deceased Medi-Cal beneficiary, in whole or in part, when the Department determines that enforcement of the claim would result in an undue hardship to the heir(s), survivors, or other dependents. The Department provides written notice informing the person handling the decedent's estate of the right to seek a waiver of or to contest the Department's claim. The notice and attachments include the basis for the estate claim; the specific statutes and regulations supporting the claim; a summary of the basis for the applicant to seek a waiver or estate hearing due to hardship; a copy of the itemized Medi-Cal payments that constitute the basis for the claim; an application for waiver of the claim; an explanation of the right to request an estate hearing, if dissatisfied with the decision in response to the application for waiver; and the time frames for requesting a waiver or estate hearing. An applicant has 60 days from the date stated on the Department's notice in which to submit an application for waiver.

The actual criteria used in determining undue hardships is listed in (5) above. An applicant may challenge the Department's hardship waiver decision by submitting a written request for an estate hearing to the Director of the Department within 60 days of the date of the Department's notice of such decision. The Department shall provide the applicant at least 30 days notice of the date, time, and place of the hearing. The hearing shall be conducted within 60 days from the date of the request and may be continued for good cause, e.g., illness, injury, incarceration of the applicant, etc.

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E. Continued

For an applicant who lives in the State, the Department shall conduct the hearing within the California Court of Appeal district where the applicant resides. In the case of an applicant who lives out of the State, the hearing shall be conducted in Sacramento, California.

At the estate hearing, the applicant and/or representative shall have the opportunity to be heard, offer evidence, and present witnesses in support of the request for a waiver. All testimony shall be submitted under oath, affirmation, or penalty of perjury. The proceedings at the estate hearing shall be electronically recorded. The applicant and/or representative shall be prepared to leave copies of all documents which support the request for a waiver with the hearing officer.

The hearing shall be conducted in an impartial manner by a hearing officer appointed by the Department's Director. A proposed decision stating the applicable law, evidence, and reasoning upon which the decision is based, shall be submitted to the Director no more than 30 days after the hearing record is closed. Any errors or omissions in the information provided by the applicant that would affect the Department's decision may be a basis for denial of the request for hardship waiver.

Within 30 days after the proposed decision is received by the Director, the Director may adopt the decision, reject the proposed decision and have a decision prepared based upon the record, or refer the matter to the hearing officer to take additional evidence. If the Director takes no action within 30 days after receipt of the proposed decision, the decision shall be deemed adopted. The decision shall be deemed adopted. The decision shall be final upon adoption by the Director and no further administrative appeal shall occur.

Copies of the decision shall be mailed, by certified mail, to the applicant or their designated representative. Judicial review of the final decision of the Department may be made by filing a petition for a writ of administrative mandate in accordance with the provisions of Section 11094.5, et seq., Code of Civil Procedure.

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